

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

BRANDON TREAT,

Petitioner,

v.

JEFF PREMO,

Respondent.

Case No.: 3:11-cv-00631-JE

**OPINION AND ORDER ADOPTING
FINDINGS AND RECOMMENDATIONS**

Brandon Treat, 2315 21st Place, Forest Grove, Oregon 97216. Petitioner *Pro se*.

Kristen E. Boyd, Assistant Attorney General, Department of Justice, 1162 Court Street NE, Salem, Oregon 97310. Of attorneys for Respondent.

SIMON, District Judge.

On July 2, 2012, Magistrate Judge John Jelderks filed Findings and Recommendations in this case. Dkt. 28. Judge Jelderks recommended that Plaintiff Brandon Treat's ("Plaintiff") Petition for Writ of Habeas Corpus, Dkt. 2, should be denied and a judgment should be entered dismissing this case with prejudice. Judge Jelderks also recommend that the court should decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). No party has filed objections.

Under the Federal Magistrates Act, the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de*

novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, “[t]here is no indication that Congress, in enacting [the Magistrates Act] intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Federal Rules of Civil Procedure recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No objections having been made, the court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Jelderks’s findings and recommendations for clear error on the face of the record. No such error is apparent. Accordingly, the court **ADOPTS** Magistrate Judge Jelderks’s Findings and Recommendation, Dkt. 28.

IT IS SO ORDERED.

Dated this 13th day of September, 2012.

/s/ Michael H. Simon

Michael H. Simon
United States District Judge